

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(215)

CRM-M-7123-2022

Date of decision: - 20.04.2022

Dharambir

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a first bail application under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.227 dated 03.08.2021, registered under Sections 20(b)(ii)(c)/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station Rajound, District Kaithal.

Learned counsel for the petitioner has submitted that in the present case, no recovery has been effected from the petitioner and the recovery has been effected from co-accused Pardeep and even the secret information was against the said co-accused Pardeep. It is submitted that the petitioner has only been made an accused only on the basis of disclosure statement of said co-accused Pardeep and there is no other

incriminating evidence against him and no recovery has been made from the petitioner even after he was made an accused on the basis of disclosure statement of co-accused Pardeep. It is also argued that in fact the said Pardeep had first given the disclosure statement on 03.08.2021 (Annexure P-2), in which, he had not named the present petitioner and it is only subsequently on 05.08.2021 (Annexure P-3), the second statement has been suffered, in which, co-accused Pardeep has named the present petitioner.

Learned counsel for the petitioner has relied upon the upon the judgment of the Hon'ble Supreme Court in case titled as '***Tofan Singh Vs. State of Tamil Nadu***', ***reported as 2021(1) RCR (Criminal) (1)*** and judgment passed in ***CRM-M-12051-2020***, by a Co-ordinate Bench of this Court dated 17.06.2020 titled as "***Mewa Singh Vs. State of Punjab***" and the judgment passed in ***CRM-M-12997-2020 titled as "Daljit Singh Vs. State of Haryana"***, to contend that merely on the basis of the disclosure statement, the petitioner cannot be denied the benefit of regular bail.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the quantity, which has been recovered from co-accused Pardeep, is of commercial quantity and the petitioner is involved in one more case i.e. FIR No.258 dated 01.09.2020, registered under Sections 18, 21 and 25 of the NDPS Act, at Police Station Nissing, District Karnal.

Learned counsel for the petitioner in rebuttal has submitted that the petitioner has already been granted bail in the said case and in fact in the bail order, it was argued that since the recovery of alleged

morphine was within the range 0.09 to .19 per cent, thus, the same would not fall under the definition of "opium". The relevant portion of the said judgment is as under: -

"Learned counsel for the petitioner referred to the FSL report to contend that the contraband allegedly recovered from the petitioner was morphine within the range 0.09 to .19 per cent and since its percentage was less than 0.2 per cent, the same would not fall under the definition of "opium" and resultantly, was not narcotics under the NDPS Act. To support dated 11.03.2015 passed in CRR-373-2015 – Vinay Kumar and another vs. State of Punjab and dated 01.10.2018 passed in CRR-2723-2018 – Saudagar Ali vs. State of Punjab.

Learned State counsel does not dispute the above factual position but opposes the grant of bail to the petitioner on the ground that he was found transporting 120 litres of liquid opium tincture.

After considering the above factual position and in particular the FSL report read with the definition of "opium" as contained under the NDPS Act, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Karnal the petitioner is directed to be released on bail.

It is clarified that the above observations have been made only for the limited purpose of deciding the present regular bail application and the same would not be construed to be an expression of opinion on the merits of the case.

April 22, 2021

**(DEEPAK SIBAL)
JUDGE"**

Learned counsel for the petitioner has further relied upon the judgment of Hon'ble Supreme Court in "**Maulana Mohd. Amir Rashadi vs. State of U.P. and another**", **reported as 2012 (2) SCC 382**, to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground

that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard the learned counsel for the parties and has perused the paper book and also gone through the above-said judgments.

The Co-ordinate Bench of this Court in ***Mewa Singh’ case*** (supra) has held as under: -

“1. The petitioner has approached this Court seeking grant of anticipatory bail in a case registered against him vide FIR No.133 dated 24.11.2019 under Section 21 NDPS Act Police Station Lohian, District Jalandhar.

2. Reply way of affidavit of Mr. Piara Singh, PPS, Deputy Superintendent of Police, Sub-Division Shahkot, District Jalandhar (Rural) on behalf of the respondent-State has been filed, which is taken on record.

3. The allegations in nut-shell are that Bachittar Singh was found in possession of 1.7 Kgs. ‘Heroin’. During the course of interrogation, he made a disclosure statement nominating the petitioner as an accused wherein he stated that the contraband in question had been supplied by the petitioner.

4. Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and was never arrested at the spot and that the alleged disclosure statement is not worth credence.

5. Opposing the petition, learned State counsel has submitted that keeping in view the antecedents of the petitioner his

complicity is clearly evident inasmuch as he stands involved in three other cases i.e. FIR No.43 dated 2.4.2016 under Sections 15, 21, 22 NDPS Act, Police Station Sultanpur Lodhi; FIR No.5 dated 5.1.2020 under Sections 307, 186, 332, 353, 224, 225, 427, 148, 149 IPC, Police Station Sultanpur Lodhi & FIR No.193 dated 22.11.2019 under Sections 15, 21, 25, 29 NDPS Act, Police Station Kartarpur.

6. *I have considered rival submissions addressed before this Court.*

7. *It is not disputed that the petitioner was never apprehended at the spot and that the only evidence against him is in the shape of disclosure statement, the admissibility and veracity of which would be tested during the course of trial. As regards the other three cases which are stated to be pending against the petitioner, the learned counsel for the petitioner has submitted that even in the said cases he has been falsely implicated and was never arrested at the spot and has been granted anticipatory bail in all three cases.*

8. *Having regard to the facts and circumstances of the case and that it is a case where the petitioner has been nominated solely on the basis of disclosure statement, the petition is accepted and it is ordered that the petitioner in the event of his arrest shall be released on bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.*

9. *It is however clarified that in case the petitioner does not join investigation, it shall be open to the investigating agency/prosecution to move for cancellation of his bail.”*

The relevant portion of ***Daljit Singh's*** (*supra*) judgment is reproduced hereinbelow:-

“Petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C. in case bearing FIR No.188 dated 08.04.2020 registered under Sections 15, 18, 27A, 29 of NDPS Act, under Sections 140, 188,

216, 419, 420, 467, 468, 471, 474 IPC and under Section 6 of Official Secret Act at Police Station Pehowa, District Kurukshetra.

Petitioner has been implicated on the basis of disclosure statement of co-accused from whom 248 kgs of poppy husk, 1 Kg 500 grams of opium and 199 Kgs khas khas were recovered.

FIR was registered on the basis of secret information, but still name of petitioner did not figure in the ruqa of the police.

Notice of motion was issued on 27.05.2020 alongwith interim directions in favour of the petitioner to join the investigation.

Order dated 27.05.2020 is reproduced here as under:-

“On account of outbreak of covid-19 the instant matter is being taken up through video conferencing.

Instant petition has been filed under Section 438 Cr.PC for grant of anticipatory bail to the petitioner in FIR No.188 dated 8.4.2020 for the offences under Section 15,18,27-A,29 of NDPS Act, 1985 at Police Station Pehowa, District Kurukshetra.

Learned counsel for the petitioner has inter alia contended that the petitioner is innocent and has been falsely implicated in the case only on the basis of disclosure statement of co-accused from whom recovery of 248 kgs of poppy husk, 1 kg 500 grams of opium and 199 kgs.of khas khas was recovered. It has been further contended that the factum of his false implication is further fortified from the fact that the recovery of the aforementioned narcotic contraband was effected on the basis of secret information and his name did not figure either in the ruka sent by the police nor in the FIR in question coupled with the fact that nothing was recovered from him. He is not even involved in any other case of similar nature.

Notice of motion for 10.7.2020.

On the asking of the Court, Mr. Saurabh Mohunta, DAG., Haryana accepts notice.

Meanwhile, petitioner is directed to join the investigation and appear before the investigating agency/Investigating Officer. On his appearance, he shall be released on interim bail to the satisfaction of

arresting/investigating officer. The petitioner shall, join the investigation as and when call for and shall abide by the conditions specified under Section 438(2) Cr.P.C.

27.05.2020

(MANJARI NEHRU KAUL)

JUDGE

Thereafter, the case was adjourned for filing detailed reply on behalf of the State.

The stands of the State is that the petitioner was escorting the canter in which the contraband was present and he was assigned the duty of giving signal in case of presence of police on the way.

Learned State counsel relies upon call details, tower location of the petitioner and the co-accused and also relies upon bank statement showing deposit of amount in the account of coaccused. The material on which the learned State counsel relies upon is dependent upon the evidence to be led in that context at the relevant stage.

Petitioner has joined the investigation, but learned State counsel seeks custody of the petitioner on the aforesaid premise.

*Having heard learned counsel for the parties, I find that the petitioner having involved on the basis of disclosure statement of co-accused namely Balbir and Rajinder is hit by the ratio of **Tofan Singh vs State of Tamil Nadu, Criminal Appeal No.152 of 2013** wherein it has been observed that the officers who are invested with powers under Section 53 of NDPS Act are the police officers within the meaning of Section 25 of the Evidence Act. Any confessional statement made before the police officer would be hit by Section 25 of the Evidence Act. Statement under Section 67 of NDPS Act cannot be used as a confessional statement in the trial of an offence under NDPS Act.*

In view of aforesaid position, it would be just and appropriate to confirm order dated 27.05.2020, without meaning anything on the merits of the case.

Ordered accordingly.

However, the petitioner shall keep on joining the investigation as and when required to do so by the Investigating Officer and shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Petition stands disposed of.”

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved, the Hon'ble Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the period of custody and the merits of the case, granted bail/suspension of sentence. Some of the said judgments are being discussed hereinafter.

In ***Criminal Appeal No.965 of 2021*** titled as ***Dheeren Kumar Jaina v. Union of India***, the Hon'ble Supreme Court in a case where allegation in the chargesheet was with respect to 120 kg of contraband i.e. "ganja", thus, being of commercial quantity, was pleased to grant bail after setting aside the order of the High Court where the said application for grant of regular bail had been rejected.

A co-ordinate Bench of this Court in a detailed judgment titled as ***Ankush Kumar @ Sonu v. State of Punjab*** reported as 2018 (4) RCR (Criminal) 84, had considered the provision of Section 37 of the NDPS Act in extenso and had granted bail in a case which involved commercial quantity. The relevant portion of the said judgment is reproduced as under:

“ xxx—xxx--xxx

But, so far as second part of Section 37 (1) (b) (ii), i.e. regarding the satisfaction of the Court based on reasons to believe that the accused would not commit 'any offence' after coming out of the custody, is concerned, this Court finds that this is the requirement which is being insisted by the State, despite the same being irrational and being incomprehensible from any material on record. As held above, this Court cannot go into the future mental state of the mind of

the petitioner as to what he would be, likely, doing after getting released on bail. Therefore, if this Court cannot record a reasonable satisfaction that the petitioner is not likely to commit 'any offence' or 'offence under NDPS Act' after being released on bail, then this court, also, does not have any reasonable ground to be satisfied that the petitioner is likely to commit any offence after he is released on bail. Hence, this satisfaction of the Court in this regard is neutral qua future possible conduct of the petitioner.”

The Special Leave Petition (Criminal) Diary No.42609 of 2018 filed against the aforesaid judgment of the Co-ordinate Bench of this Court, was dismissed by the Hon'ble Supreme Court.

Further, vide order dated 25.02.2021 in CRM-M-20177-2020, a Co-ordinate Bench of this Court granted regular bail to an accused who was involved in a case wherein recovery was of 3.8 kgs of “charas” (commercial quantity) after being in custody for 1 year and 7 months. The said order was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in a Petition for Special Leave to Appeal (Crl.) No.5852/2021 titled as “ ***Narcotic Control Bureau v. Vipin Sood and another***”.

The Hon'ble Supreme Court of India vide order dated 12.10.2020 passed in Criminal Appeal No.668 of 2020 titled as “ ***Amit Singh @ Moni v. Himachal Pradesh***” was pleased to grant regular bail in a case involving 3 kg and 800 grams of “charas” primarily on the ground of substantial custody and also, the fact that the trial would likely take time to conclude.

In Criminal Appeal No.827 of 2021 titled as ***Mukarram Hussain v. State of Rajasthan and another***, the Hon'ble Apex Court

vide judgment dated 16.8.2021 was also pleased to grant bail wherein the quantity of the contraband was commercial in nature.

A Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as ***Ajay Kumar @ Nannu v. State of Punjab*** and other connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the NDPS Act, was pleased to grant regular bail in a case involving commercial quantity and a condition was imposed on the petitioner therein while granting the said bail and the said condition was incorporated in para 21 of the said judgment, which reads as under: -

“21. However, the petitioners are granted regular bail subject to the condition that they shall not commit any offence under the NDPS Act after their release on bail and in case of commission of any such offence by them after their release on bail, their bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.”

Further, a Division Bench of this Court vide judgment ***dated 31.08.2021 passed in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as, Harpal Singh v. National Investigating Agency and another***, granted suspension of sentence in a case where the recovery was of commercial quantity. In the abovementioned order, the Division Bench had taken into consideration the right vested with an accused person/convict under Article 21 of the Constitution of India with regard to speedy trial. Further, the judgment of Hon'ble the Supreme Court in ***State (NCT of Delhi) v. Lokesh Chadha; (2021) 5 SCC 724*** was also taken into account and the provisions of Section 37 of NDPS Act were considered and the sentence of the applicant-appellant therein was suspended after primarily

considering the period of custody of the applicant-appellant therein and also the fact that the appeal was not likely to be heard in near future. Reference in the order was also made to the Division Bench judgment of this Court in *Daler Singh v. State of Punjab; 2007 (1) R.C.R. (Criminal) 316* and the view taken in *Daler Singh's case (supra)* was reiterated and followed. In the above said judgment, it was also noticed that the grounds for regular bail stand on a better footing than that of suspension of sentence which is after conviction. It is apparent that to meet the requirement of Section 37 of the NDPS Act, various Courts have taken into consideration the merits of the case and the period of custody and where, in a case there are arguable points on merits and the custody is also adequate, the Hon'ble Supreme as well as various High Courts have granted bail even in cases involving commercial quantity.

It is not in dispute that the alleged recovery in the present case is not from the present petitioner and it is from the co-accused Pardeep and even the secret information received was not against the petitioner. Petitioner is sought to be implicated in the present case solely on the basis of disclosure statement of co-accused Pardeep. Even after the said disclosure statement had been made, no other incriminating evidence has surfaced, much less, with respect to any recovery from the petitioner. Even the co-accused Pardeep had first given the disclosure statement on 03.08.2021, in which, he had not named the petitioner and it is only in the subsequent disclosure statement dated 05.08.2021, that he named the present petitioner. Petitioner has been in custody since 19.10.2021 and there are 16 prosecution witnesses, none of whom have been examined

and thus, the trial is likely to take some time. Moreover, all the witnesses are stated to be official witnesses, thus, the question of influencing them does not arise.

Keeping in view the above-said facts and circumstances as well as the judgments referred herein above, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

April 20, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
No